Caltrans

Water Quality NewsFlash

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Construction Runoff – *Court says EPA should develop standards* –In 2004, U.S. EPA announced that it would not develop discharge standards for construction site runoff (http://www.epa.gov/guide/construction/rule.html). As specified in the Clean Water Act, "BCT/BAT" is the minimum performance standard for industrial-type wastewater discharges including construction site stormwater runoff. *BCT* stands for *Best Conventional Pollutant Control Technology* and applies only to the following pollutants: suspended solids (TSS), biological oxygen demand (BOD), pH, and fecal coliform bacteria. *Best Available Technology Economically Achievable* (*BAT*) applies to toxic pollutants such as metals and pesticides, as well as "nonconventional pollutants," which includes everything else.

Normally, both BCT and BAT are numeric limits that are defined by EPA for the specific industry involved (these are called "effluent limitations guidelines"). The guidelines usually provide either a concentration limit or a pound pollutant/per pound product type of limitation. In the absence of these guidelines, BCT/BAT is based on a case-by-case determination made by the permit writer (using "best professional judgment" or BPJ). These case-by-case determinations are supposed to be documented and must address specific criteria listed in the federal regulations. For BCT, which includes suspended solids, the criteria specify that the costs should not be excessive when compared with the costs achieved by sewage treatment plants (per pound of pollutant).

Unfortunately, what BCT/BAT actually means for construction site stormwater runoff is not clear. EPA's announcement in 2004 meant that states were left on their own in determining BAT/BCT for construction sites. California responded, in part, by setting up the Storm Water ("Blue Ribbon") Panel to make recommendations on the feasibility of numeric effluent limits. Now the U.S. District Court for the Central District of California has ruled that EPA should have set effluent limitations guidelines for construction site runoff as well as new source performance standards. The case was brought by several environmental groups and the states of New York and Connecticut. EPA has indicated it will study the decision to determine its next steps. If EPA does develop standards it would likely clarify the level of protection needed for construction sites. Decision: http://docs.nrdc.org/water/wat_06062901A.pdf

Ex Parte Communications – *When is it appropriate to contact Board members?* – "An ex parte communication is a communication to a board member about a pending water board matter that occurs in the absence of other parties to the matter and without notice and opportunity for all parties to participate in the communication." These communications are prohibited in some cases for reasons of due process and fundamental fairness. The Board's Chief Counsel has prepared a Q&A document to address this issue including a useful flow chart: http://www.swrcb.ca.gov/docs/exparte.pdf

Tahoe – *Model predicts improvements with load reductions* – An interesting modeling effort by the Tahoe Environmental Research Center shows that gradual reductions of nutrients and "fines" on the order of 30-40% over time will improve water clarity: http://www.waterboards.ca.gov/lahontan/TMDL/Tahoe/clarity_presentation2fForum_27july06.pdf

WQ NewsFlash is a weekly update of storm water and related news for the Department. *Verify information before taking action on these bulletins*. Contact Betty Sanchez, Betty_Sanchez@dot.ca.gov (916) 653-2115, or Fred Krieger, (510) 843-7889, fkrieger@msn.com with questions or to be added or deleted from e-mail list. Posted online at: http://www.dot.ca.gov/hq/env/stormwater/publicat/newsflash/index.htm